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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,183	10/04/2000	Raphael Meyers	4984-7	6617

7590                    07/30/2003

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[REDACTED] EXAMINER

SNAPP, SANDRA S

ART UNIT	PAPER NUMBER
3624	

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/679,183	MEYERS, RAPHAEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sandra Snapp	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 August 2001.
  - 2a) This action is FINAL.                    2b) This action is non-final.
  - 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- Disposition of Claims**
- 4) Claim(s) 1-57 is/are pending in the application.
    - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
  - 5) Claim(s) \_\_\_\_\_ is/are allowed.
  - 6) Claim(s) 1-57 is/are rejected.
  - 7) Claim(s) 53 is/are objected to.
  - 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 October 2000 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because a figure legend is not necessary with a single figure. Also, since there is only one figure, the figure description should start with "The Figure is a ...." A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. See 37 C.F.R. 1.84.

### ***Specification***

The disclosure is objected to because of the following informalities: the Abstract exceeds the 150 word limit. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

***Claim Objections***

Claim 53 is objected to because of the following informalities: the term “means” is misspelled as “mans” in line 4 of the claim, on page 49. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4 and 53 are indefinite because it is unclear what the metes and bounds of the claim are because of the use of the phrase “more competitively.” What is considered “more?” More than what?

Claim 19 is indefinite because it states “said bids” in lines 7 & 8 of the claim on page 43, however it is unclear if “said” is referring to the first, second or successive bidders?

Claim 50 is indefinite because it states “a bidder” in line 2, yet it is unclear if this is actually a first bidder, a second bidder, or a different bidder altogether.

Claims 53-57 are indefinite because they are directed to a “system” however it is unclear whether the “system” is actually for a method or an apparatus. A statement for the record clarifying the Applicant’s intention with regard to the use of “system” will satisfy this rejection. In the alternative, an amendment to the claim to include appropriate language identifying the claims as one directed to a method or an apparatus will also suffice (i.e. structural language if the claim is for an apparatus, and step language if the claim is for a method).

Claims 2-52 and 54-57 are rejected as being indefinite because they depend from rejected base claims 1 and 53.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-57 are rejected under 35 U.S.C. 102(b) as being anticipated by the Nymeyer patent (US 3,581,072). The Nymeyer patent discloses a method for conducting an auction comprising the steps of:

Offering at least one item for same for a predetermined period of time, receiving a first bid for the item from a first bidder, according a first value to the first bidder as a first function of the timing and the worth of the first bid, receiving at least one succeeding bid from another bidder, according a second value to the other bidder as a second function of timing and worth of the second bid, accumulating values accorded the first bidder for each bid, accumulating values accorded the other bidder for each bid, comparing the accumulated values of the first bidder and the other bidder, and identifying an auction leader by comparing the accumulated values of the first bidder with those of the other bidders (col. 6, lines 28-64) (claims 1, 10, 53-57);

The first and second functions are substantially identical (col. 5, lines 35-74) (claim 2) or are different (claim 3);

The first function accords a greater value to the earliest bid of a group of identical bids (col. 2, lines 10-13) (claim 4);

The comparison of values is made on a continuous basis (col. 6, lines 39-50) (claim 11) or at a predetermined time wherein the predetermined times are incremental time periods, days, hours, minutes, seconds (Examiner takes official notice that comparisons can be made at predetermined times) (claims 13-17);

The accumulating of the values occurs each time the worth of a bid exceeds a worth of all preceding bids (col. 6, lines 45-40) (claim 18);

The worth of a successive bid is required to be greater than a worth of a preceding bid by a minimum increments (per share) (claim 19);

Establishing a floor value depends on the amount by which the fist bid and the successive bids exceed the floor value (col. 6, lines 51-63) (claim 20);

At least one of the first and second functions accords a value based upon at least on predetermined worth criterion (value = the order they are placed in auction, with worth criterion being time and amount)(claims 26-29);

The benefit is permitting the auction leader to acquire the item (inherent in an auction, the person with the best bid (leader) acquires the item (wins))(claims 30-33 and 38-40);

At least two substantially identical bids are offered for sale, wherein bidders are permitted to bid on more than one of the items, each bidder must specify how many of the identical items are being bid upon and the amount of the bid, and the values are accumulated for each bid on each item (col. 6, lines 7-28)(claims 45-47);

The first and second function is accumulated for all bids placed by a bidder up to a specific time (order period, col. 12, lines 67-77) (claims 50-52).

***Allowable Subject Matter***

Claims 5-7, 21-24 and 41-44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Silverman et al., Harrington et al., Johnson et al., Woolston (both), Aggarwal et al., Mori et al., Ausubel, Fraser et al., Bell, Godin et al., Fisher et al., Franklin et al., Chou et al., Berent et al. (both), Zandi, Godin et al., Brown, Clearwater, and Fujisaki patents are all directed to online auction systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Snapp whose telephone number is 703-305-6940. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

ss  
July 28, 2003



VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600